

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3
4 GILBERTO RODRIGUEZ VELAZQUEZ,
5 et al.,

6 Plaintiffs,

7 CIVIL NO. 03-2331 (RLA)

8 v.

9
10 AUTORIDAD METROPOLITANA DE
11 AUTOBUSES,

12 Defendant.

13 ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

14 Defendant, AUTORIDAD METROPOLITANA DE AUTOBUSES ("AMA"), has
15 moved the court to enter summary judgment dismissing the instant
16 complaint on various grounds. The court having reviewed the arguments
17 of the parties together with the documents submitted in support of
18 defendant's request hereby finds that dismissal of the federal causes
19 of action is warranted based on timeliness grounds as well as
20 plaintiff's failure to exhaust the requisite administrative remedies.
21 Accordingly, there is no need to address the alternate grounds
22 advanced by defendant in support of its petition for dismissal.

23 **THE FACTS**

24 The following facts are not disputed.

25 1. Plaintiff, GILBERTO RODRIGUEZ VELAZQUEZ, commenced working
26 with AMA on **August 8, 1988.**

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2 . On **May 2, 1994**, RODRIGUEZ VELAZQUEZ suffered a work-related
3 accident and reported to the STATE INSURANCE FUND ("SIF")
4 for treatment.

5 . RODRIGUEZ VELAZQUEZ returned to work in **May 1995**.

6 . Upon his return to work in May 1995, RODRIGUEZ VELAZQUEZ
7 could not perform his prior duties as a skilled mechanic
8 without reasonable accommodation.

9 . In **December 1995**, RODRIGUEZ VELAZQUEZ requested a disabled-
10 person parking space.

11 . In **January 1996**, RODRIGUEZ VELAZQUEZ again reported to the
12 SIF.

13 . Thereafter, RODRIGUEZ VELAZQUEZ returned to work in **January**
14 **1999**.

15 . On **March 15, 2000**, RODRIGUEZ VELAZQUEZ filed an
16 administrative claim with the EEOC.

17 . The EEOC issued RODRIGUEZ VELAZQUEZ a Right to Sue Letter
18 on **September 15, 2003**.

19 . The instant complaint was filed on **December 15, 2003**.

20 **SUMMARY JUDGMENT STANDARD**

21 Rule 56(c) Fed. R. Civ. P., which sets forth the standard for
22 ruling on summary judgment motions, in pertinent part provides that
23 they shall be granted "if the pleadings, depositions, answers to
24 interrogatories, and admissions on file, together with the
25 affidavits, if any, show that there is no genuine issue as to any
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2 material fact and that the moving party is entitled to a judgment as
3 a matter of law." Sands v. Ridefilm Corp., 212 F.3d 657, 660-61 (1st
4 Cir. 2000); Barreto-Rivera v. Medina-Vargas, 168 F.3d 42, 45 (1st Cir.
5 1999). The party seeking summary judgment must first demonstrate the
6 absence of a genuine issue of material fact in the record.
7 DeNovellis v. Shalala, 124 F.3d 298, 306 (1st Cir. 1997). A genuine
8 issue exists if there is sufficient evidence supporting the claimed
9 factual disputes to require a trial. Morris v. Gov't Dev. Bank of
10 Puerto Rico, 27 F.3d 746, 748 (1st Cir. 1994); LeBlanc v. Great Am.
11 Ins. Co., 6 F.3d 836, 841 (1st Cir. 1993), cert. denied, 511 U.S.
12 1018, 114 S.Ct. 1398, 128 L.Ed.2d 72 (1994). A fact is material if
13 it might affect the outcome of a lawsuit under the governing law.
14 Morrissey v. Boston Five Cents Sav. Bank, 54 F. 3d 27, 31 (1st Cir.
15 1995).

16 "In ruling on a motion for summary judgment, the court must view
17 'the facts in the light most favorable to the non-moving party,
18 drawing all reasonable inferences in that party's favor.'" Poulis-
19 Minott v. Smith, 388 F.3d 354, 361 (1st Cir. 2004) (citing Barbour v.
20 Dynamics Research Corp., 63 F.3d 32, 36 (1st Cir. 1995)).

21 Credibility issues fall outside the scope of summary judgment.
22 "'Credibility determinations, the weighing of the evidence, and the
23 drawing of legitimate inferences from the facts are jury functions,
24 not those of a judge.'" Reeves v. Sanderson Plumbing Prods., Inc.,
25 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) (citing
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Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). See also, Dominguez-Cruz v. Suttle Caribe, Inc., 202 F.3d 424, 432 (1st Cir. 2000) ("court should not engage in credibility assessments."); Simas v. First Citizens' Fed. Credit Union, 170 F.3d 37, 49 (1st Cir. 1999) ("credibility determinations are for the factfinder at trial, not for the court at summary judgment."); Perez-Trujillo v. Volvo Car Corp., 137 F.3d 50, 54 (1st Cir. 1998) (credibility issues not proper on summary judgment); Molina Quintero v. Caribe G.E. Power Breakers, Inc., 234 F.Supp.2d 108, 113 (D.P.R. 2002). "There is no room for credibility determinations, no room for the measured weighing of conflicting evidence such as the trial process entails, and no room for the judge to superimpose his own ideas of probability and likelihood. In fact, only if the record, viewed in this manner and without regard to credibility determinations, reveals no genuine issue as to any material fact may the court enter summary judgment.". Cruz-Baez v. Negron-Irizarry, 360 F.Supp.2d 326, 332 (D.P.R. 2005) (internal citations, brackets and quotation marks omitted).

In cases where the non-movant party bears the ultimate burden of proof, he must present definite and competent evidence to rebut a motion for summary judgment, Anderson v. Liberty Lobby, Inc., 477 U.S. at 256-257, 106 S.Ct. 2505, 91 L.Ed.2d 202; Navarro v. Pfizer Corp., 261 F.3d 90, 94 (1st Cir. 2000); Grant's Dairy v. Comm'r of Maine Dep't of Agric., 232 F.3d 8, 14 (1st Cir. 2000), and cannot rely

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2 upon "conclusory allegations, improbable inferences, and unsupported
3 speculation". Lopez-Carrasquillo v. Rubianes, 230 F.3d 409, 412 (1st
4 Cir. 2000); Maldonado-Denis v. Castillo-Rodríguez, 23 F.3d 576, 581
5 (1st Cir. 1994); Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d
6 5, 8 (1st Cir. 1990).

7 **THE COMPLAINT**

8 Plaintiff asserts claims under the American with Disabilities
9 Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, the Rehabilitation Act, 29
10 U.S.C. § 793, *et seq.*, Puerto Rico Law 100 of May 30, 1959, P.R. Laws
11 Ann. tit. 29, § 146 *et seq.* (2002) and Puerto Rico Law 44 of July 2,
12 1985, P.R. Laws Ann. tit. 1, § 501 *et seq.*, (1999) for alleged
13 disability discrimination.

14 According to the complaint, plaintiff GILBERTO RODRIGUEZ
15 VELAZQUEZ commenced working for AMA in 1988 as a "skilled mechanic"
16 until May 2, 1994, when he suffered a work-related accident. As a
17 result thereof, plaintiff was absent from work approximately one year
18 while receiving treatment from the SIF.

19 Plaintiff returned to work at AMA in May 1995, with a SIF
20 certification of 35% disability and a recommendation for reasonable
21 accommodation. Plaintiff claims he was provided a bench to perform
22 his duties but denied "a proper reasonable accommodation, which
23 includes a parking space for disable [sic] persons [such as
24 plaintiff] and properly functioning elevators and/or ramps,

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2 notwithstanding [plaintiff's] constant demands for said
3 accommodations". Complaint ¶ 25.

4 Plaintiff again reported to the SIF in January 1996, where he
5 received treatment for the next three years.

6 In January 1999, plaintiff went back to work at AMA. "Before
7 returning to work SIF recommended to AMA to modify [plaintiff's] work
8 schedule and to provide him again with a bench to perform his duties
9 as a reasonable accommodation." Complaint ¶ 28.

10 "Notwithstanding the SIF's clear and unambiguous recommendation,
11 AMA denied [plaintiff] the recommended bench and did not modify [his]
12 work schedule. Furthermore, AMA continued to deny [plaintiff] with a
13 parking space for a qualified individual with disabilities, and did
14 not have properly working elevators and/or ramps." Complaint ¶ 29.

15 "Due to [plaintiff's] constant demands for his rights and
16 necessary reasonable accommodation, AMA... forced [plaintiff] to
17 perform duties that were detrimental to his physical disability and
18 constantly discriminated against him.... AMA... denied [plaintiff] a
19 toolbox that all employees of his same rank were entitled to; forced
20 to work for the full 8-hour period standing up; denied the parking
21 space constantly requested by [plaintiff]; continued to grant salary
22 increases and other benefits to other non-disable [sic] employees in
23 the same work area as [plaintiff]; constantly filed unjustified and
24 baseless reports against [plaintiff] in order to intimidate him; and
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3 continuously proffer derogatory comments against [plaintiff] due to
4 this disability." Complaint ¶ 31.5 Plaintiff again reported to the SIF on August 5, 1999, where, in
6 less than a month, was granted 100% disability status.7 On June 6, 2003, "in another discriminatory action [AMA]
8 proceeded to terminate [plaintiff's] employment based on a falsely
9 (sic) absentee allegation." Complaint ¶ 35.10 **ELEVENTH AMENDMENT IMMUNITY**11 Defendant raises Eleventh Amendment immunity as to the ADA-
12 related claims.13 ADA "forbids discrimination against persons with disabilities in
14 three major areas of public life: employment, which is covered by
15 Title I of the statute; public services programs, and activities,
16 which are the subject of Title II; and public accommodations, which
17 are covered by Title III." Bd. of Trustees of Univ. of Ala. v.
18 Garrett, 531 U.S. 356, 372, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). It
19 is evident from a reading of the complaint that the claims under ADA
20 are based exclusively on defendant's alleged failure to grant him a
21 reasonable accommodation in his work under Title I.22 Under Garrett, states have been found to be immune from Title I
23 ADA suits in federal court based on the protection afforded by the
24 Eleventh Amendment.¹25

26 ¹ This immunity has not been extended to certain Title II ADA
actions. See, i.e., Tennessee v. Lane, 541 U.S. 509, 124 S.Ct. 1978,
158 L.Ed.2d 820 (2004) (case involving access to courts brought by

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The Eleventh Amendment to the United States Constitution bars the commencement and prosecution in federal court of suits claiming damages brought against any state, including Puerto Rico, without its consent. Toledo v. Sanchez, 454 F.3d 24 (1st Cir. 2006); Fresenius Med. Care Cardiovascular Res., Inc. v. Puerto Rico and Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56, 61 (1st Cir. 2003); Futura Dev. v. Estado Libre Asociado, 144 F.3d 7, 12-13 (1st Cir. 1998); In re San Juan Dupont Plaza Hotel Fire Lit., 888 F.2d 940, 942 (1st Cir. 1989); Ramirez v. P.R. Fire Serv., 715 F.2d 694, 697 (1st Cir. 1983).

Eleventh Amendment immunity applies even though the state has not been named in the suit. Its protection is extended to governmental entities which are deemed an arm or alter ego of the state. Royal Caribbean Corp. v. Puerto Rico Ports Auth., 973 F.2d 8, 9-10 (1st Cir. 1992); In re San Juan Dupont Plaza Hotel Fire Lit., 888 2d at 943-44.

The principal factors to weigh in determining whether or not a particular entity qualifies as an alter ego of a state, are whether the agency exercises a governmental or a proprietary function and whether an adverse judgment will be satisfied from public or separate

individuals protected by the statute); Toledo v. Sanchez, (student purportedly denied accommodation at public education facility). Although addressed at a lower level, the Eleventh Amendment's applicability to Title III suits is yet to be resolved by the United States Supreme Court. See, i.e., Simmang v. Texas Bd. of Law Examiners, 346 F.Supp.2d 874 (W.D.Tex. 2004) (Title III suits barred by the Eleventh Amendment).

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2 agency funds. Royal Caribbean Corp., 973 F.2d at 9-10; In re San
3 Juan Dupont Plaza Hotel Fire Litigation, 888 2d at 943-44. In
4 examining the nature of the agency's function, we must scrutinize it
5 within the specific context of the claims asserted in the complaint.
6 Royal Caribbean.

7 Additionally, the analysis should include consideration of "the
8 agency's degree of autonomy; the power of the agency to sue and be
9 sued and enter into contracts; whether the agency's property is
10 immune from state taxation and whether the state has insulated itself
11 from responsibility for the agency's operations." M/V Manhattan
12 Prince, 897 F.2d 1, 9 (1st Cir. 1990). See also, Ainsworth Aristocrat
13 Int' Pty., Ltd. v. Tourism Co. of Puerto Rico, 818 F.2d 1034, 1037
14 (1st Cir. 1987).

15 The protection afforded by the Eleventh Amendment to
16 governmental entities is not automatic. Its applicability depends on
17 a number of factors including the degree of administrative autonomy
18 and fiscal independence enjoyed by the entity which, in this
19 particular case, remain unknown to the Court. Absent evidence of the
20 relevant facts essential to conducting a proper analysis, the Court
21 is unable to make a determination regarding the applicability of the
22 Eleventh Amendment immunity to the petitioning defendant.

23 Other than raising the immunity defense, AMA has not met its
24 burden of pointing to the evidence indicative that it is indeed an
25 alter ego of the Commonwealth of Puerto Rico and entitled to Eleventh
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3 Amendment protection. Rather, AMA's organic act specifically provides
4 that it is a "public corporation having legal existence and
5 personality separate and apart from those of the Government"² with an
6 independent economic existence."³

7 Faced with this scenario, we find AMA's Eleventh Amendment
8 argument without merit.

9 **EEOC CHARGE**

10 ADA incorporated the exhaustion requirements applicable to Title
11 VII discrimination suits. Thus, "a claimant who seeks to recover for
12 an asserted violation of Title I of the ADA, like one who seeks to
13 recover for an asserted violation of Title VII, must first exhaust
14 administrative remedies by filing a charge with the EEOC, or
15 alternatively, with an appropriate state or local agency, within the
16 prescribed time limits... This omission, if unexcused, bars the
17 courthouse door, as courts long have recognized that Title VII's
18 charge-filing requirement is a prerequisite to the commencement of
19 suit." Bonilla v. Muebles J.J. Alvarez, Inc., 194 F.3d 275, 278 (1st
20 1999).

21 Prior to resorting to the courts for relief, plaintiffs must
22 present their discrimination claims under Title VII to the
23 appropriate agency. "In light of the statutory scheme, it is
24 unsurprising that, in a Title VII case, a plaintiff's unexcused

25 ² P.R. Laws Ann. tit. 23 § 603(a) (1999).

26 ³ *Id.* at § 603(b).

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2 failure to exhaust administrative remedies effectively bars the
3 courthouse door." Jorge v. Rumsfeld, 404 F.3d 556, 564 (1st Cir.
4 2005). "In order to prosecute a [Title VII] claim... an aggrieved
5 party must first file a timely administrative complaint." Noviello v.
6 City of Boston, 398 F.3d 76, 85 (1st Cir. 2005). "[P]laintiffs [may]
7 not proceed under Title VII without first exhausting administrative
8 remedies." Lebron-Rios v. U.S. Marshal Service, 341 F.3d 7, 13 (1st
9 Cir. 2003); Bonilla v. Muebles J.J. Alvarez, Inc., 194 F.3d 275, 278
10 (1st Cir. 1999). "Title VII requires that an aggrieved individual
11 exhaust his or her administrative remedies as a prerequisite to
12 filing suit in federal court." Dressler v. Daniel, 315 F.3d 75, 78
13 (1st Cir. 2003). "Title VII requires, as a predicate to a civil
14 action, that the complainant first file an administrative charge with
15 the EEOC within a specified and relatively short time period (usually
16 180 or 300 days) after the discrimination complained of". Clockedile
17 v. New Hampshire Dept. of Corrections, 245 F.3d 1, 3 (1st Cir. 2001).

18 The purpose behind the exhaustion requirement is to give the
19 employer timely notice of the events as well as provide an
20 opportunity for an early amicable resolution of the controversy.
21 "That purpose would be frustrated... if the employee were permitted
22 to allege one thing in the administrative charge and later allege
23 something entirely different in a subsequent civil action." Lattimore
24 v. Polaroid Corp., 99 F.3d. 456, 464 (1st Cir. 1996).
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2 In Puerto Rico, an aggrieved employee has 300 days from the
 3 occurrence of the employment action complained of to file an
 4 administrative charge in instances where the local Department of
 5 Labor is empowered to provide relief, i.e., in instances of
 6 "deferral" jurisdiction. Bonilla, 194 F.3d at 278 n.4; Lebron-Rios v.
 7 U.S. Marshal Serv., 341 F.3d 7, 11 n.5 (1st Cir. 2003). Otherwise,
 8 the applicable period is 180 days. *See*, 42 U.S.C. § 2000e-5(e)(1).⁴

9 On the other hand, the Puerto Rico Anti-Discrimination Unit of
 10 the Department of Labor has no jurisdiction over Title VII
 11 retaliation claims and thus, is not deemed a Designated Agency under
 12 § 2000e-5(e)(1). Therefore, claims for retaliation must be filed with
 13 the EEOC within 180 days from the events complained of.⁵

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16 ⁴ In pertinent part, § 2000e-5(e)(1) reads:

17 A charge under this section shall be filed
 18 within **one hundred and eighty days** after the
 19 alleged unlawful employment practice occurred...
 20 except that in a case of an unlawful employment
 21 practice with respect to which the person
 22 aggrieved has initially instituted proceedings
 23 with a state or local agency with authority to
 grant or seek relief from such practice or to
 institute criminal proceedings with respect
 thereto... such charge shall be filed by or on
 behalf of the person aggrieved within **three**
hundred days after the alleged unlawful
 employment practice occurred.

24 (Emphasis ours).

25 ⁵ The designation of Puerto Rico as a "deferral" state for Title
 26 VII violations specifically excludes retaliation claims asserted
 under Sec. 704(a), 42 U.S.C. § 2000e-3(a). *See*, 29 C.F.R. § 1601.74.

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2 Plaintiff filed a discrimination charge with the EEOC on
3 March 15, 2000, which asserts discrimination based on ADA and
4 religion. In pertinent part, it reads:

5 Since 12/95 I have been requesting some type of reasonable
6 accommodation (Title I, A.D.A), (Public Law 44), that areas
7 of the General garage (parking) M.B.A. and the rest of the
8 facilities be modified for persons with disabilities. Since
9 10/95 to the present I have had a special permit to park in
10 the parking for the disabled... and it has been
11 continuously denied... I consider that I have been
12 discriminated against because of my religious beliefs and
13 my disability... I request that you comply with what has
14 been stipulated in the A.D.A.... reasonable accommodation
15 (parking)....

16 Clearly, the only references to ADA discrimination in the
17 aforementioned charge pertain to adequate parking and building
18 facilities for the disabled. No mention is made regarding failure to
19 grant plaintiff a reasonable accommodation in his working conditions
20 as per the SIF's recommendations nor of harassment due to his
21 disability or retaliation as suggested in the complaint.

22 Therefore, any attempts by plaintiff to litigate matters
23 involving alleged disability discrimination for failure to provide
24 him reasonable accommodation in his working conditions and/or
25 retaliation are foreclosed.

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2 Only those allegations regarding special parking needs as well
3 as the request for "the rest of the facilities [to] be modified for
4 persons with disabilities" need be addressed in this Order.⁶

5 **HOSTILE WORK ENVIRONMENT**

6 Plaintiff argues that claims based on the parking and building
7 conditions are not time-barred because his "cause of action is based
8 on AMA's continuous acts that in the aggregate constitute a hostile
9 work environment that culminated with the unjust termination of
10 plaintiff's employment after plaintiff filed a complaint in [sic] the
11 EEOC." Opposition to Motion for Summary Judgment ¶ 6 (docket No. 53).

12 It has been held that, similar to Title VII discrimination
13 actions, ADA-covered individuals may assert hostile work environment
14 claims premised on disability-based harassment. Shaver v. Independent
15 Stave Co., 350 F.3d 716 (8th Cir. 2003); Fox v. Gen. Motors Corp., 247
16 F.3d 169 (4th Cir. 2001); Flowers v. Regional Physician Serv., Inc.,
17 247 F.3d 229 (5th Cir. 2001). See also, Quiles-Quiles v. Henderson,
18 439 F.3d 1, 5 n.1 (1st Cir. 2006) (allowing disability-harassment
19 claim under the Rehabilitation Act).

20 Further, the elements used for Title VII hostile environment
21 claims have been adapted to ADA cases. "Accordingly, to succeed on a
22 claim of disability-based harassment, the plaintiff must prove: (1)
23 that [he] belongs to a protected group; (2) that [he] was subjected

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26 ⁶ It should also be noted that no allegations of religious bias
appear in the pleadings.

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2 to unwelcome harassment; (3) that the harassment complained of was
3 based on [his] disability or disabilities; (4) that the harassment
4 complained of affected a term, condition, or privilege of employment;
5 and (5) that the employer knew or should have known of the harassment
6 and failed to take prompt, remedial action." Flowers, 247 F.3d at
7 235; Fox, 247 F.3d at 178.

8 "To recover on a hostile environment claim, a plaintiff must
9 demonstrate not only that he subjectively perceived his workplace
10 environment as hostile, but also that a reasonable person would so
11 perceive it, i.e., that it was objectively hostile." Flowers, 247
12 F.3d at 235; Shaver, 350 F.3d at 721.

13 The court must consider the following factors in assessing
14 whether the conduct constitutes an abusive work environment: "the
15 frequency of the discriminatory conduct, its severity, whether it is
16 physically threatening or humiliating, or a mere offensive utterance,
17 and whether it unreasonably interferes with an employee's work
18 performance." Flowers, 247 F.3d at 236 (citations and internal
19 quotations omitted); Fox, 247 F.3d at 178.

20 However, as previously noted, the EEOC charge is completely
21 devoid of any reference to events other than the parking and
22 facilities conditions. There is no reference in the EEOC charge to a
23 hostile work environment or disability based harassment.⁷

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25 ⁷ Further, the complaint fails to plead such a claim. There are
26 no factual allegations in the pleading which would even remotely be
construed to assert such a cause of action.

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3 Accordingly, we reject plaintiff's arguments regarding a hostile
4 work environment and find that plaintiff is precluded from asserting
5 these claims which clearly fall outside the purview of the
6 administrative charges.

7 **PARKING AND BUILDING FACILITIES**

8 In the alternative, plaintiff contends that the ADA claims based
9 on the allegations regarding the parking and building facilities are
10 timely inasmuch as he "constantly" requested AMA for these particular
11 accommodations.

12 However, apart from this general and conclusory statement,
13 plaintiff has failed to present evidence to establish that indeed,
14 his last requests for accommodation pertaining to the parking and
15 other building facilities fell within 300 days prior to submitting
16 the EEOC charge on March 15, 2000.

17 Hence, these claims must also be dismissed.

18 **REHABILITATION ACT**

19 We find there is no viable claim under the Rehabilitation Act,
20 29 U.S.C. § 794(a). This particular statute precludes disability
21 discrimination under programs receiving Federal financial assistance,
22 see Lesley v. Hee Man Chie, 250 F.3d 47, 53 (1st Cir. 2001) or
23 conducted by federal executive agencies, see, Feliciano-Hill, 439
24 F.3d 1; Quiles-Quiles, 439 F.3d 1 (1st Cir. 2006). Plaintiff has not
25 presented evidence that defendant qualified for protection under this
26 statutory provision.

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3 **CONCLUSION**

4 Based on the foregoing, the Motion Requesting Summary Judgment
5 filed by AMA (docket No. **44**)⁸ is hereby **GRANTED** and the claims
6 asserted under ADA and the Rehabilitation Act are hereby **DISMISSED**.

7 It is further ORDERED that the supplemental claims asserted
8 under Law 100 and Law 44 are hereby **DISMISSED WITHOUT PREJUDICE**.

9 Judgment shall be entered accordingly.

10 IT IS SO ORDERED.

11 San Juan, Puerto Rico, this 19th day of April, 2007.

12
13 S/Raymond L. Acosta
RAYMOND L. ACOSTA
14 United States District Judge

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26 ⁸ See also, plaintiffs' Opposition (docket No. **53**) and AMA's
Reply (docket No. **58**).